(4)

NO. 89-523

In the Supreme Court of the United States

OCTOBER TERM, 1989

BERMUDA STAR LINE, INC.,
Petitioner

VERSUS

JOHN SPYRIDON MARKOZANNES,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

REPLY BRIEF OF PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

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JOHN SPYRIDON MARKOZANNES,
Respondent

REPLY BRIEF OF PETITIONER

STATEMENT OF THE CASE

The Respondent's brief states that "[a]t the outset of litigation, Petitioner *stipulated* that it was amenable to jurisdiction *in personam* in Orleans Parish, Louisiana." Brief for Respondent at 1. Correctly stated, Petitioner agreed to accept service in New Orleans, Louisiana and agreed not to challenge personal jurisdiction. Both parties specifically agreed that the issues of *forum non conveniens* and proper venue were not waived and would be raised by the Petitioner.[1] These issues were raised as exceptions filed immediately at the outset of litigation (R. 12). Those exceptions were ultimately reviewed by the Louisiana

[1] *See*, Appendix to this reply brief, *infra*, which comprises part of the record of the Civil District Court for the Parish of Orleans, State of Louisiana (R. 143-51).

Supreme Court which held that the admiralty doctrine of *forum non conveniens* was inapplicable and that maritime cases filed in state court were governed by state procedural law (R. 463).

ARGUMENT

JURISDICTION

This Court has clear jurisdiction over this appeal under the authority of 28 U.S.C. § 1257. Respondent challenges jurisdiction on the grounds that the decision of the Louisiana Supreme Court is not a "final" order or decree within the meaning of the statute, citing *Wilfried Van Cauwenberghe v. Biard*, 486 U.S. 517, 108 S. Ct. 1945 (1988). Respondent's position is in error. The argument fails to perceive the distinction between a final order of a state's court of last resort denying a basic federal right (*see, e.g., Mercantile National Bank at Dallas v. Langdeau*, 371 U.S. 555, 557-58, 83 S. Ct. 520, 522 (1963); *American Motorists Ins. Co. v. Starnes*, 425 U.S. 637, 641-42, 96 S. Ct. 1800, 1803 (1976)) and a discretionary decision of a trial judge, denying a dismissal of *forum non conveniens* under the specific facts of an individual case as in *Biard*, 108 S. Ct. at 1953. The Supreme Court patently had jurisdiction over the former but not over the latter.

The *Markozannes* decision below is a final order of Louisiana's highest court that a maritime defendant has no right to the protection of the maritime doctrine of *forum non conveniens* when the action is commenced in Louisiana state courts. This Court has long recognized that decisions of this type are "final" within the meaning of § 1257 even when there remain further proceedings in the lower state courts. *Cox Broadcasting Corp. v. Cohn*, 400 U.S. 469, 476-87, 95 S. Ct. 1029, 1036-42 (1975); *Langdeau*, 371 U.S.

555. As in *Langdeau* and *Cox Broadcasting*, the legal issue is entirely separate and distinct from the merits of Respondent's claims. Those decisions recognize the jurisdiction of the Supreme Court to review decrees of the state's highest courts which finally resolve federal issues particularly where the Court may be precluded from review of an important federal question following the further state proceedings. *Cox Broadcasting*, 400 U.S. at 482-83.

Immediate review of such federal issues is particularly appropriate when action by the Supreme Court might obviate unnecessary, expensive, and time-consuming litigation. *Cox Broadcasting*, 400 U.S. at 478. In *Langdeau*, this Court upheld its jurisdiction to review a state court decision regarding a federal challenge to state venue provisions. The Court recognized that its review of the federal issue (which involved a choice betweeen courts of the same state) could obviate "long and complex litigation which may be for naught if consideration of the preliminary questions of venue is postponed until the conclusion of the proceedings." *Langdeau*, 371 U.S. at 558; *see also*, *Starnes*, 425 U.S. at 639.

Petitioner respectfully submits that the decision below presents such a final order regarding an important federal issue within the jurisdiction of the Supreme Court under 28 U.S.C. § 1257.

MERITS OF CERTIORARI

Petitioner urged in its initial brief that the *Markozannes* ruling decides an important issue of federal law that should be resolved by this Court and that the Louisiana decision directly conflicts with the *Choo* and *Camejo* decisions of the United States Court of Appeals for

the Fifth Circuit.[2] The importance of this issue is to some extent evident from opposition urged by the American Trial Lawyers Association and the Louisiana Trial Lawyers Association. The significance of this issue is further manifest in substantial litigation concerning this hotly contested topic.[3] Nonetheless, neither Respondent nor *Amici Curiae* directly respond to the importance of this federal question.

Without guidance from this Court, the admiralty practice will continue to be plagued with redundant and expensive litigation wherein maritime claimants whose actions are dismissed in federal court under principles of *forum non conveniens* will commence duplicative actions in state courts for the obvious advantage of forcing a maritime defendant to litigate in a patently inconvenient forum without regard to the prior federal ruling or uniform principles of maritime law. Petitioner respectfully urges that guidance by this Court is needed with respect to a maritime defendant's right to be protected from such vexatious and harassing litigation.[4]

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[2] *Exxon v. Chick Kam Choo*, 817 F.2d 307 (5th Cir. 1987), *rev'd on other grounds*, 486 U.S. 140, 108 S. Ct. 1684 (1988); *Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374 (5th Cir. 1988).

[3] *See* discussion in Petitioner's initial brief, pp. 13-15 and the unreported decision of *Torvald Klaveness and Company A/S v. Rosauro Quintero, et al.*, C.A. No. 88-1879 (E.D. La. December 12, 1989), which is in the Appendix, *infra*.

[4] As noted by this Court in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S. Ct. 839, 842 (1947), such is the principal objective of this doctrine:

> The principle of *forum non conveniens* is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute. These statutes are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his

Without addressing the issue of whether *certiorari* is warranted, Respondent and *Amici Curiae* argue the merits of the issue, alleging that *forum non conveniens* is merely a procedural matter which should be decided under the authority of state procedural rules, citing *Missouri ex rel. Southern R. Co. v. Mayfield*, 340 U.S. 1, 71 S. Ct. 1 (1950) and *Sun Oil Co. v. Wortman*, 486 U.S. 717, 108 S. Ct. 2117 (1988). Brief for Respondent at 7-9; Brief for Amicus Curiae at 3, 7-8, 13. However, there is a fundamental difference between the interstate considerations involved in the *Mayfield* and *Wortman* cases and the Constitutional issues and international concerns inherent in the conflict between state law and the general maritime law. U.S. Const. art III, § 2, cl. 1; *The Lottawanna*, 88 U.S. (21 Wall.) 558, 575 (1875); *Panama R. Co. v. Hohnson*, 264 U.S. 375, 387, 46 S. Ct. 391, 394 (1924); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 160, 40 S. Ct. 438, 440 (1920); *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 214-18, 37 S. Ct. 524, 528-30 (1917).

The issue in *Mayfield* concerned the potential application of state rules of *forum non conveniens* in the context of a railroad claim under FELA. It did not concern international commerce or conflicts with any uniform law, such as the general maritime law, recognized and protected under our Constitution. *See generally Mayfield* 340 U.S. 1. Likewise, the *Wortman* decision involved the application of the forum state's statute of limitations rather than the statutes of limitations of other states having an interest in the controversy. 108 S. Ct. at 2121. Neither case considered

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(Footnote 4 continued)

> remedy. But the open door may admit those who seek not simply justice but perhaps justice blended with some harassment. A plaintiff sometimes is under temptation to resort to a strategy of forcing the trial at a most inconvenient place for an adversary, even at some inconvenience to himself.

any issue of international commerce or uniformity or the general maritime law. By contrast to the decision in *Wortman,* the general maritime law manifestly requires uniform application by all courts (state and federal) of maritime statutory limitations and the alternate judicial doctrine of laches rather than state procedural limitations. *Cox v. Roth,* 348 U.S. 207, 75 S. Ct. 242 (1955); *Engel v. Davenport,* 271 U.S. 33, 46 S. Ct. 410 (1926); *see also* 1 M. Norris, *The Law of Maritime Personal Injuries* §124 at 230-32 (3d ed. 1975); 2 M. Norris, *The Law of Seamen* § 30:20 at 393-96 (4th ed. 1985).[5] The Constitutional recognition of the general maritime law compels the application by the state courts of all the critical features of maritime law (substantive or procedural) in precedence over conflicting state law and procedures.

The opposition briefs do not directly challenge the concept of *forum non conveniens* as an integral part of the general maritime law and a basic right of a maritime defendant. The continued vitality of this doctrine has been recognized by this Court, even in non-maritime contexts. *Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 102 S. Ct. 252 (1981). Therein, this Court noted the long history of this doctrine and its frequent application to federal admiralty actions. *Id.* at 248 n. 13. The *Reyno* court further dismissed opponents' contention[6] that choice-of-law considerations should be dispositive of the federal doctrine of *forum non conveniens.* Citing its admiralty decision of *Canada Malting Co. v. Paterson Steamships, Ltd.,*285 U.S. 413, 52 S. Ct. 413 (1932), the *Reyno* Court specifically held that

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[5] *See also King v. Alaska S.S. Co.,* 431 F.2d 994 (9th Cir. 1970); *Flowers v. Savannah Machine and Foundary Co.,* 310 F.2d 135 (5th Cir. 1962); *Oroz v. American President Lines, Ltd.,* 259 F.2d 636 (2d Cir. 1958), *cert. denied,* 359 U.S. 908, 79 S. Ct. 584 (1959).

[6] *See* brief for *Amici,* p. 5.

held that "[t]he possibility of a change in substantive law should ordinarily not be given conclusive or even substantial weight in the *forum non conveniens* inquiry." 454 U.S. at 247.

While Petitioner concedes that the doctrine has become applicable to non-maritime cases[7] and provided the basis underlying the statutory motion to transfer within the federal system,[8] the right to a convenient forum nonetheless remains a viable and critical part of a maritime defense. *See, e.g., Exxon v. Chick Kam Choo,* 817 F.2d. 307; *Zipfel v. Halliburton Co.,* 832 F.2d 1477 (9th Cir. 1987), *modified,* 861 F.2d 565 (9th cir. 1988), *cert. denied* ___ U.S. ___, 108 S. Ct. 2819, *reh'g denied,* ___ U.S. ___, 109 S. Ct. 2 (1988). This doctrine remains a strong feature of the admiralty law and a significant right of a maritime defendant to guarantee adjudication of an admiralty claim in a fair and convenient forum.

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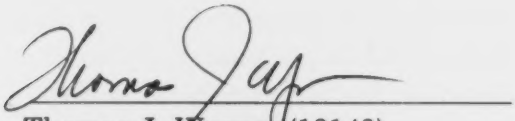
[7] *See generally Reyno,* 454 U.S. 235; *Gilbert,* 330 U.S. 501.

[8] *See* 28 U.S.C. § 1404; Brief for Respondent at 2.

CONCLUSION

Petitioner respectfully prays that this Court grant a writ of certiorari to resolve the conflict between the maritime doctrine of *forum non conveniens* and state procedural law.

Respectfully submitted,



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and
WAGNER & BAGOT
Counsel of Record for Petitioner

OF COUNSEL:

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New York, New York 10038
Telephone: (212) 233-4690

WAGNER & BAGOT

AFFIDAVIT OF SERVICE

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority duly commissioned and qualified in the aforesaid state and parish, came and appeared:

THOMAS J. WAGNER

who, after being sworn by me, did depose and say: that he is the counsel of record for Petitioner Bermuda Star Line, Inc., and that three copies of this Petition were served on Respondent John S. Markozannes through his attorneys of record delineated below by first-class mail, postage prepaid on this 11th day of January 1990.

C. John Caskey
628 North Boulevard, Suite 200
Baton rouge, Louisiana 70802

Paul H. Due'
Due', Smith & Caballero
8201 Jefferson Highway
Baton Rouge, Louisiana 70809

Charles Wm. Roberts
1626 Applewood
Baton Rouge, Louisiana 70808

David W. Robertson
727 East 26th Street
Austin, Texas 78705

Thomas J. Wagner
WAGNER & BAGOT
336 Camp Street
Suite 250, C & R Building
New Orleans, Louisiana 70130-2804
Telephone: (504) 525-2141
Counsel of Record for Petitioner

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 4th DAY OF Jan, 1990

NOTARY PUBLIC

My commission expires: _____

MICHAEL D. RILEY
NOTARY PUBLIC
State of Louisiana
My Commission Is Issued For Life

APPENDIX A

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 88-8624 DIVISION "H" DOCKET NO. (4)

JOHN SPYRIDON MARKOZANNES
VERSUS
BERMUDA STAR-LINE, INC.

FILED:_____ _____
DEPUTY CLERK

AFFIDAVIT

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personnally came and appeared

THOMAS J. WAGNER

who, being duly sworn by me did depose and say the following:

That he is counsel of record for Bermuda Star Line, Inc., defendant in the captioned matter, and he makes this affidavit in support of defendant's motion to quash oral depositions, convert same to depositions on written question, postpone depositions and/or assess costs.

That on April 28, 1988, counsel was appointed to represent Bermuda Star Line, Inc. and respond to the letter of plaintiff's counsel dated April 27, 1988 and attached

hereto as Exhibit "A". Plaintiff's counsel indicated that he planned to seize the S/S BERMUDA STAR in order secure jurisdiction over the defendant under a petition and writ of attachment. Upon information and belief, the vessel was scheduled to arrive in New Orleans on May 9 or 10, 1988.

That counsel conferred with his principals and thereafter negotiated with plaintiff's counsel and reached an agreement with plaintiff's counsel under which undersigned counsel would be appointed to accept service of the suit of John S. Markozannes. It was specifically agreed that Bermuda Star Line, Inc. would not contest personal jurisdiction but that it would contest the venue of the Louisiana courts as well as the appropriateness of the forum under principles of *forum non conveniens.* In accord with this agreement, undersigned counsel was appointed to accept service of this suit. See Exhibit "B". Undersigned counsel filed exceptions of *forum non conveniens* and improper venue and also filed a stipulation acknowledging personal jurisdiction. These were filed on May 5 and 6, 1988. See Exhibits "C" and "D", attached. The stipulation and exceptions were filed before the vessel's arrival in New Orleans. Furthermore, plaintiff's counsel was clearly agreeable to the defendant asserting defenses of improper venue and *forum non conveniens* as indicated in plaintiff's counsel's proposed stipulation which is attached hereto as Exhibit "E". The perticular stipulation was ultimately not executed by counsel for defendant because it referred to "Suits" in the plural rather than the individual suit of John S. Markozannes. Instead, Exhibit "D" was executed and filed.

That with respect to the proposed discovery, undersigned counsel was not notified in advance that plaintiff intended to schedule any depositions in Greece until the notices were transmitted. Undersigned counsel had

previously requested that plaintiff's counsel provide all medical records and bills so that the maintenance and cure issue could be expedited. No such documents were provided to undersigned counsel proir to the noticing of these depositions. Nevertheless, upon information and belief, defendant has paid in excess of $12,000.00 in medical and transporation expenses directly even though plaintiff's counsel has not submitted same.

That undersigned counsel's schedule conflicts with the depositions noticed in Greece for July 19, 20, 21 and 22, 1988 and that there is no immediate need to take these depositions as such can be expeditiously handled through more economical convenience and less extravagant means.

That the information contained in this affidavit is true and correct to the best of the affidavit's own knowledge, information and belief.

/s/ Thomas J. Wagner
THOMAS J. WAGNER

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 12th DAY
OF JULY, 1988, IN NEW
ORLEANS, LOUISIANA.

/s/ illegible
NOTARY PUBLIC

APPENDIX B

C. JOHN CASKEY
Attorney at Law
North Boulevard
Suite B
Baton Rouge, LA

April 27, 1988

Mr. Charles F. Lozes
Terriberry, Carrol & Yancey
2100 World Trade Center
New Orleans, LA 70130

RE: John Spyrdion Markosannes vs.
Bermuda Star Line, Inc.
Orleans, Civil District Court

Dear Mr. Lozes:

Attached you will please find a draft copy of a Petition and Writ of Attachment which I am filing concurrently in the Orleans Civil District Court. The Petition is largely self-explanatory. The S/S BERMUDA STAR is a passenger ship. In the past, I have had occasion to size passenger ships in which your office appeared as counsel of record. As you know, seizure of a passenger ship can be quits disruptive to operations. As a courtesy to your client, I am giving your office advance notice of this attachment in state court so that possible arrangements can be made for the posting of security. In state court, my requirements for security would be the posting of a $50,000.00 bond with a signed agreement that the security, upon demand, will be increased by the appropriate insurer up to $500,000.00.

As you know, the holding of *Kaspapas vs. Arkon Shipping Agency, Inc.*, 485 So.2d 565 (La. App. 5th Cir. 1986)

prohibits a *forum non conveniens* transfer of a case out of state court in Louisiana to another jurisdiction (or dismissal). This is apparently not a "foreign seaman" case in the sense that plaintiff risks a possible dismissal on grounds of *forum non conveniens* in any event, but inasmuch as Bermuda Star line, Inc., is a New Jersey corporation, there is the distinct possibility that this case could be transferred to New Jersey pursuant to 28 U.S.C. §140(a) should the case be filed in federal court.

I am willing to file this suit in the first instance in federal court without any seizure of the S/S BERMUDA STAR (and no need to post security at all) *if* (1) there is not a coverage question relative to the applicable P & I policy, (2) the P & I Club involved will agree to be made a party defendant in federal court and will make a general appearance, and (3) all defendants agree that they will not bring a motion to dismiss on grounds of *forum non conveniens* in federal court or a motion to transfer to the state of New Jersey pursuant to 28 U.S.C. §140(a). If your client finds the above proposal inappropriate or inconvenient, we can proceed along state court lines. As we both know, Orleans Civil District Court is usually preferable as a jurisdiction from the plaintiff's standpoint, however balanced with this is the inordinate delay that is encountered in waiting for a trial date. It is really irrelevant from the standpoint of my client how we proceed, so I will leave that decision up to you.

Please let me know how we are going to proceed as soon as possible, because I will be in London beginning May 6, 1988, I will have to make arrangements for this attachment well in advance of my departure.

Kindest Regards,

C. John Caskey

cc: George Pavlakis
CJC/tmg

APPENDIX C

BERMUDA STAR LINE, INC. 1088 TEANECK, TEANECK, NEW JERSEY 07888 TELEPHONE (201)837 0400/TELEX 139213

May 3, 1988

Thomas J. Wagner, Esq.
Wagner & Bagot
Suite 250—C & R Building
336 Camp Street
New Orleans, Louisiana 70130-2804

Via Facsimile Transmission

Dear Mr. Wagner:

Concerning our previous discussions, Bermuda Star Line, Inc., hearby confirms its appointment of you as its agent for service of process, summons, complaint and all other papers requiring service in Louisiana in connection with any law suit to be filed on or behalf of John S. Markoannes (Ioannis Markosannes) in connection with any accident, injury and or illness on the SS BERMUDA STAR.

Very truly yours,

BERMUSA STAR LINE, INC.

/s/ Donald L. Caldera
DONALD L. CALDERA
Chairman and Chief Executive Officer

SS CANADA STAR • SS BERMUDA STAR • SS VERACRUZ

APPENDIX D

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 88-8624 DIVISION "H" DOCKET NO. ___

JOHN SPYRIDON MARKOZANNES
VERSUS
BERMUDA STAR-LINE, INC.
THE STEAMSHIP MUTUAL
UNDERWRITING ASSOCOATION, LTD.

FILED: _____ _____
DEPUTY CLERK

EXCEPTIONS OF FORUM NON CONVENIENS AND IMPROPER VENUE

NOW INTO COURT, through undersigned counsel, comes exceptor, Bermuda Star Line, Inc., which acknowledges the appointment of Thomas J. Wagner to accept service of suit papers filed on behalf of John Spyridon Markozannes in this action only, and excepts to this Court's exercise of jurisdiction on the basis of *forum non conveniens* and improper venue.

Respectfully submitted,

/s/ Michael H. Bagot, Jr.

THOMAS J. WAGNER
MICHAEL H. BAGOT, JR.
N. ELEANOR GRAHAM
Suite 250 - C & P. Building
New Orleans, Louisiana
Telephone: (504) 525-2141
and
WAGNER & BAGOT
Attorneys for Defendant
Bermuda Star Line, Inc.

CERTIFICATE

I, the undersigned authority, hereby certify that I have this date forwarded a copy of the above and foregoing pleading to all Counsel involved herein.

This 5th day of May
1988
M. H. Bagot, Jr.

APPENDIX E

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 88-8624 DIVISION "H" DOCKET NO. ___

JOHN SPYRIDON MARKOZANNES
VERSUS
BERMUDA STAR LINE, INC. and
THE STEAMSHIP MUTUAL
UNDERWRITING ASSOCIATION, LTD.

FILED: _____ _____
DEPUTY CLERK

STIPULATION

NOW INTO COURT, through undersigned counsel, come plaintiff, John Spyridon Markozannes, and defendant, Bermuda Star Line, Inc., who agree and stipulate that Bermuda Star Line, Inc. does not and will not challenge the court's jurisdiction over the person of Bermuda Star Line, Inc. in this case.

Plaintiff,
John Spyridon Markozannes

By: /s/ C. John Caskey

C. JOHN CASKEY
732 North Boulevard
Suite B
Baton Rouge, Louisiana 70802
Telephone: (504) 343-9850

Defendant,
Bermuda Star Line, Inc.

By: /s/ M. H. Bagot, Jr.

THOMAS J. WAGNER
MICHAEL H. BAGOT, JR.
N. ELEANOR GRAHAM
WAGNER & BAGOT
Suite 250 - C & R Building
New Orleans, Louisiana
Telephone: (504) 525-2141

CERTIFICATE

I, the undersigned authority, hereby certify that I have this date forwarded a copy of the above and foregoing pleading to all Counsel involved herein.

This 6th day of May
1988
M. H. Bagot, Jr.

APPENDIX F

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO. 88-8624 DIVISION "H" DOCKET NO. (4)

* * * * * * * * * * * * * * * * * *

JOHN SPYRIDON MARKOZANNES
VERSUS
BERMUDA STAR LINE, INC. and
THE STEAMSHIP MUTUAL
UNDERWRITING ASSOCOATION, LTD.
FILED:_____ DY. CLERK: _____

* *

STIPULATION

NOW INTO COURT, through undersigned counsel, comes Plaintiff John Spyridon Markozannes, and Defendant, Bermuda Star Line, Inc., and hereby stipulate to the following:

By acknowledging that Bermuda Star Line, Inc. has appointed as agent for service of process in suits against it in this State undersigned counsel and by acknowledging that this Court has personal jurisdiction over Bermuda Star Line, Inc. by virtue of said appointment, Bermuda Star Line, Inc. does not thereby waive its right to assert exceptions of improper venue or its right to raise *forum non conveniens* defenses to this action.

C. JOHN CASKEY
Attorney for Plaintiff

By: /s/ C. John Caskey

C. JOHN CASKEY
Attorney at Law
732 North Boulevard, Suite B
Baton Rouge, Louisiana 70802
Telephone: (504) 343-9850

THOMAS J. WAGNER
Attorney for Defendant, Bermuda Star Line, Inc.

BY: _____

THOMAS J. WAGNER
Wagner & Bagot
336 Camp Street
New Orleans, LA 70130
Telephone: (504) 523-1587

APPENDIX G

MINUTE ENTRY
McNAMARA, J.
DECEMBER 12, 1989

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

TORVALD KLAVENESS AND COMPANY A/S	*	CIVIL ACTION
VERSUS	*	NO. 88-1879
ROSAURO QUINTERO, ET AL	*	SECTION "D" (2)

Before the court are the Cross-Motions of Plaintiff, Torvald Klaveness and Company A/S, and Defendants, Rosauro Quintero and Frank Sloan, for Summary Judgment. These Motions were heard before the court on Wednesday, November 29, 1989.

Having considered the memoranda of counsel and the applicable law, the court now rules on the issues presented in these Cross-Motions for Summary Judgment.

1. Plaintiff asks this court to enjoin the current state court proceedings in Civil District Court on the basis of this court's Minute Entry of September 29, 1989 in Civil Action No. 86-4241 (hereinafter "Minute Entry"). The court's Minute Entry ruled that Quintero's action against Klaveness should be dismissed on the basis of federal *forum non conveniens.* In making that analysis, this court also determined that Philippine law should be applied in

this matter according to the *Lauritzen-Rhoditis* test. Plaintiff argues that this court's choice-of-law decision "necessarily precludes every cause of action stated in either the original federal suit or the subsequent state court action." Plaintiff's Memorandum, p. 3.

It is well settled that a federal court may only enjoin state court proceedings if the injunction fits within the exceptions to the Anti-Injunction Act, 28 U.S.C. § 2283 (1982). Section 2283 provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." Plaintiff argues that an injunction would fit within the third exception ("to protect or effectuate its judgments"), which is called the relitigation exception.

The Supreme Court case *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 108 S.Ct. 1684 (1988), delineates the parameters of the relitigation exception to the Anti-Injunction Act. In *Chick Kam Choo,* a Singapore resident was accidentally killed in Singapore while performing repair work on a ship owned by one of the defendants. The decedent's wife sued in federal district court alleging causes of action under the general federal maritime law and the Texas Wrongful Death Statutes. The district court granted defendants summary judgment on the maritime law claim, concluding that choice-of-law principles required that Singapore law, and not the maritime law of the United States, should apply. The court also dismissed the case on federal *forum non conveniens* grounds, provided that the defendants submit to the Singapore's court's jurisdiction. Plaintiff then filed suit in Texas state court under Texas law and Singapore law, but the federal court enjoined the plaintiff from pursing any claims relating to her husband's

judicata "'makes a final, valid judgment conclusive on the parties, and *those in privity with them*, as to all matters, fact and law, that were or should have been adjudicated in the proceedings.'" *Id.* at 131, quoting 1B Moore's Federal Practice, para. O.4405[1] at 624 (emphasis added). *Res judicata* is applicable only when the cause of action in the state court is "identical to the cause of action" in the federal court. *Id.* The decotrine of collateral estoppel also applies in determining the scope of an injunction. The requirements for collateral estoppel "are in a sense less stringent than those of *res judicata* since in the former, relitigation of any particular legal or factual issue between two parties (or their privies) which was necessarily litigated and actually decided in the first suit is barred." *Id.*

The *Nix* decision makes it clear that an injunction to prevent relitigation of an issue that has been decided in a federal court can apply to the actual parties or *their privies* in state court. *See also, Samuel C. Ennis & Co., Inc. v. Woodman Realty Co.*, 542 F.2d 45 (7th Cir. 1976), *cert. denied.* 429 U.S. 1096 (1977). In the instant action, this court's Minute Entry did not apply to the Barwa Interests since they were not parties to Civil Action No. 86-4241. However, the Barwa Interests are clearly privies to Klaveness. The current proceeding in state court involves the same occurrence, the same plaintiff and the same issues, and the Barwa Interests stand in the identical position as Klaveness in regards to Quintero. As such, this court holds that an injunction preventing the state court from relitigating the issue of choice-of-law should extend to the Barwa Interests. Accordingly, Plaintiff's Motion for Permanent Injunction should be and is GRANTED to the extent that this court will issue an injunction enjoining the Louisiana Civil District Court from reconsidering this court's decision on choice-of-law. In all other respects, however, Plaintiff's Motion for Permanent Injunction

should be and is DENIED.

2. Plaintiff seeks an award of attorney's fees and expenses from the Defendants, arguing that their actions in state court "were unwarranted under the law and for improper purposes." Plaintiff's Memorandum, p. 6. Even if Defendants' actions in state court were for improper purposes, sanctions under Fed.R.Civ.P. 11 are not applicable to actions taken in a state court. Accordingly, Plaintiff's request for attorney's fees and expenses should be and is DENIED.

3. Defendants contend that all demands brought on behalf of the Barwa Interests should be dismissed for lack of standing under Fed.R.Civ.P. 17 since those corporations were not parties to Civil Action No. 86-4241. Since Plaintiff has amended its petition to bring in the Barwa Interests into this action, Defendants' Motion in this regard is MOOT.

Judgment will be entered accordingly.

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